

ORIGINAL

Decision No. 30546 JUL 17 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Albert R. Hund, Mrs. Albert R. Hund,)

Complainants,

vs.

Stan Korth, Lucerne Water Company,

Defendant.

Case No. 10722
(Filed February 27, 1979)

Albert R. Hund, for himself, complainant.
Stan Korth, for himself, dba Lucerne Water Company, defendant.
Bruce B. Bruchler, Attorney at Law, for Eula
Dell Hendricks, now Kroepsch, interested party.

OPINION AND ORDER

By the complaint filed herein, Mr. and Mrs. Albert R. Hund, complainants, request the Commission to order Mr. Stan Korth, dba Lucerne Water Company, defendant, to provide public utility water service to a lot owned by the Hunds located at Lucerne, California. The Commission staff was unable, on an ex parte basis, to bring complainants and defendant to a satisfactory agreement; therefore, a hearing was held before Administrative Law Judge Albert C. Porter in Lucerne on May 3, 1979; the matter was submitted on the same date.

Mr. Albert R. Hund (Hund) testified that he has owned the lot in question for 50 years; it is located in Lucerne, Lake County, California, and is further identified as Lot 462 in Clear Lake Beach Subdivision 4. Hund stated that several years ago he contacted Mr. Stan Korth (Korth), the owner of Lucerne Water Company, in order to confirm that Korth would provide water service when Hund was ready to build a house on Lot 462. As a result, Korth wrote Hund a letter dated

August 3, 1967 advising that he would serve Hund when Hund desired. Hund asserted that when he recently informed Korth that he was now ready to build and would require service, Korth stated that he could not provide service because Lot 462 is outside defendant's public utility service area. As an addendum to the complaint, Hund filed a notice from the Chief Building Inspector, Lake County, which indicates that the address of the Hunds' property in Lucerne "...shall also be known by a street...address as follows: 3878 Foothill Drive..." which would put the property inside Korth's service area since in that vicinity, property facing on Foothill Drive is within the service area.

Korth and Mr. Bob Strauss (Strauss), the manager of the water company for the past five years, testified for defendant. Korth introduced in evidence Exhibit 1, a map of Subdivision 4 which shows the location of Lot 462 in relation to defendant's service area and testified that, in his opinion, it clearly shows Lot 462 to be outside the service area. Korth stated that when he wrote the August 3, 1967 letter he believed Lot 462 was within the service area, but upon checking further, about two years ago, he found that it was not. Korth pointed out that defendant is under a limited Commission imposed moratorium on new hookups and that the first obligation of defendant is to those potential customers in defendant's service area; and, further, defendant would not consider an extension of service at this time to serve the Hunds' property. Korth testified that in his opinion the building inspector is in error by placing Lot 462 on Foothill Drive because Exhibit 1 shows it to be on Lakeview Terrace. Strauss corroborated Korth's testimony on all points.

The primary question to be resolved in this dispute is whether Lot 462 is in the utility's dedicated service area. The only evidence presented on this question by Hund was the 1967 letter from defendant and the notice of the building inspector. On the other hand, Korth provided documentary evidence (Exhibit 1) to show Lot 462 to be outside defendant's service area; he was supported on that point by the testimony of Strauss. Both Korth and Strauss believe the building inspector is in error because from their knowledge of the area and as shown on Exhibit 1, Lot 462 is on Lakeview Terrace, not Foothill Drive. Further, defendant's official service map filed with the Commission shows Lakeview Terrace to be outside defendant's service area. Finally, Hund did not challenge the authenticity of Exhibit 1 or the testimony of Korth and Strauss.

We sympathize with the plight of complainants who have made plans based on the 1967 letter which defendant claims resulted from an honest mistake. But a preponderance of the evidence, as discussed above, indicates that the lot in question is not in defendant's service area. Other than the one letter, defendant has indicated no intention to serve Lot 462. Since the question of dedicating facilities to new areas is a matter of discretion for a utility, in the absence of conduct wherein dedication is implied, the Commission cannot order service to the lot. (California Water and Telephone Co. v Public Utilities Commission (1959) 51 C 2d 478.)

Findings of Fact

1. Defendant, Stan Korth, dba Lucerne Water Company, is a public utility under the jurisdiction of this Commission.
2. Complainants, Mr. and Mrs. Albert R. Hund, are the owners of Lot 462, Clear Lake Beach Subdivision 4, Lucerne, Lake County, California.
3. Lot 462 is an undeveloped parcel of land located outside of defendant's filed service area map.

- 4. Defendant has not dedicated its service to Lot 462.
- 5. Defendant is unwilling to extend service to Lot 462.
- 6. There has been no concerted conduct by the defendant indicating an intention to dedicate service to Lot 462.

Conclusions of Law

- 1. Defendant cannot be ordered to serve Lot 462.
- 2. Complainants are not entitled to any relief in this proceeding.

IT IS ORDERED that Case No. 10722 is dismissed.

The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 17th day of JULY, 1979.

Plaintiff:
Arthur W. Goodle

John E. Byrne
President

Thomas L. Sheehan

Charles J. ...

Francis J. ...
Commissioners